TL1329-46

A POSITIVE LEGAL DUTY:

THE LIBERATION OF THE PEOPLE OF EAST TIMOR

Eric Avebury

Chairman, Parliamentary Human Rights Group UK

A paper given at the Martin Ennals Memorial Symposium, University of Saskatoon, March 5, 1992

...all States have a positive legal duty to respect, promote and assist the exercise of the right of all peoples to self-dtermination, and a negative duty to refrain from any measures which deprive peoples of that right.

Hector Gros Espiell, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, *The Right to Self-Determination*, United Nations, New York, 1980

The case of East Timor is one of unfinished decolonisation. The United Nations have declared the nineties as the decade for completion of the process begun at the end of the second world war, for dismantling the empires ruled from Europe, and East Timor is one of a dwindling number of territories still under consideration by the UN Committee on Decolonisation. It was, and is still de jure, a colony of Portugal, whose adventurers first arrived there as early as 1513. It had been a sleepy backwater of the Portuguese empire, where very little development had taken place, as Indonesian propagandists are fond of reminding us.

Not even the first steps had been taken towards self-government under the Salazar or Caetano dictatorships, although the Portuguese authorities had been quite happy to leave the local aristocracy to administer the rural areas. Only after the Portuguese revolution of April 25, 1974 was the future political status of the territory a matter of debate, both internally, and among the foreign powers immediately concerned: the US, Portugal, Indonesia and Australia. Mr Gough Whitlam, then Prime Minister of Australia, held informal talks with President Suharto in Jakarta at the beginning of September 1974, at which there was a consensus that annexation to Indonesia was the best solution. A spokesman for the Australian Department of Foreign Affairs said that an independent East Timor 'would not be capable of surviving as a state and would be a potential threat to the region'. The Foreign Ministers of Portugal and Indonesia met in New York, reiterating their intention to let the people decide freely on their future, but the Mayor of Dili protested at the talks when he said on September 26 that people objected to having their future decided by outsiders[1].

Meanwhile, preliminary moves were made towards a more democratic system of administration. Three political parties were formed: Democratic Union of Timor (UDT), which stood for continued association with Portugal; Revolutionary Front for Independence of East Timor (Fretilin), the party of independence, and Apodeti, which favoured integration with Indonesia. In March 1975, free elections were held for the first and only time in a number of regions (concelhos) of East Timor, for several hundred village chiefs (suco liurai), and out of all the successful candidates, only one was a supporter of Apodeti[2]. The elections were not fought on party lines, but one authority claims that 90% of the victors were Fretilin supporters, while the Portuguese official in charge of the process, Major Jonatas, said that when all the results were in, there was a balance between UDT and Fretilin[3]

As Jose Ramos Horta wrote, Apodeti, the Associacao Popular Democratico Timorense never had any popular appeal and was anything but democratic[4]. The Indonesians succeeded in winning over one or two of the local chiefs to Apodeti, notably one Guilherme Gonçalves, a tyrant who had enjoyed the protection of the notorious PIDE, the Portuguese secret police under the dictatorship. But it became

---

[1]**Keesing's Contemporary Archives**, January 6-12, 1975, 26908
[2]Jose Ramos Horta, **Funu, the unfinished saga of East Timor**, The Red Sea Press, Trenton, New Jersey, January 1987
[3]John G Taylor, **Indonesia's Forgotten War**, Zed Books, London, 1991, p 45.
[4]Ibid, p 32.

clear even to Jakarta that Apodeti only had a handful of supporters, under a leader whose main distinction was that he was the only Timorese to have served a sentence for war crimes. Jakarta turned its attention to the UDT, bribing Francisco Lopez da Cruz who became leader of the party and Augustino Mouzinho the Dili mayor already mentioned, the party vice-chairman. Colonel Sugianto, an agent of the army's intelligence service, BAKIN, played on their fear that East Timor could become isolated because of Fretilin's alleged extreme left posture, a line which had also been used to effect with the anti-communist powers. These two were inveigled to Jakarta in May 1975 and when they returned, Lopez da Cruz initiated moves that led to the rupture of the coalition with Fretilin that had been signed in January 1975[5].

Then on August 13, the UDT staged a coup, launching a brief civil war and prompting the withdrawal of the Portuguese Governor, Lemos Pires, and his staff to the island of Ataurọ off the coast, from which they never returned. By the end of the month, Fretilin had gained a decisive victory, and the territory was de facto independent from the beginning of September onwards. The Fretilin leaders acknowledged Portugal's sovereignty, however, and on September 16, they called on the governor, Lemos Pires, to come back and resume the decolonisation process.[6] Jim Dunn, the former Australian Consul in Dili, went to Atauro on about October 18 and urged Lemos Pires to meet the Fretilin leaders, but the governor was hesitant, having had no proper instructions from Lisbon. In the end he did agree to a meeting, provided it was held on a Portuguese corvette in Dili harbour. The Fretilin leaders accepted this proposal, with Jim Dunn offering himself as a hostage to counter their fear that once on board, Lemos Pires would have them arrested, but when Jim returned to Atauro for the second time on about October 23, the governor had left for Darwin, where he was talking to emissaries from Lisbon. With no further word from Portugal, the Timorese became convinced that they had to go it alone.[7]

Meanwhile, Indonesia had already infiltrated troops into the territory clandestinely. The CIA reported on September 4 that on the previous day, two Indonesian special forces units, each of some 100 men, had entered East Timor, and a third group consisting of three platoons had arrived in the Bobonaro-Atsabe area in mid-September. The object was to link up with Timorese under the control of Tomas Gonçalves, son of the Apodeti princeling Guilherme. According to Jose Martins, a collaborator who defected in 1976, the Indonesians had given military training to Tomas and half a dozen other Timorese, and then established a training camp at Atambua, in Indonesian Timor[8]. On October 7, the Indonesians mounted an assault on Batugade, and on October 16 they attacked Balibo, where they murdered 5 newsmen in cold blood, to stop them reporting the aggression.

All this time, Jakarta was pretending to the outside world that any military operations in the territory were a continuation of the civil war, and they were determined to prevent the lie from being exposed. In fact, however, the British, American and Australian Governments knew perfectly well what was happening and had given

---

[5]Ibid. p 52.

[6]James Dunn, **Timor: a people betrayed**, Jacaranda Press, 1983.

[7]James Dunn, **unpublished communication**.

[8]Jose Martins, **Affidavit submitted to the UN Secretary-General**, March 1976.

Jakarta the green light. The British Ambassador Sir John Archibald Ford advised Whitehall that it was *'in Britain's interest that Indonesia should absorb the territory as soon and as unobtrusively as possible'*, as if the 600,000 people of East Timor constituted a mere stain on the carpet, to be mopped up with a bit of cotton wool. 'The CIA had been monitoring the situation closely, and Henry Kissinger, who was visiting Indonesia with President Gerald Ford on December 6, the day before the full scale assault on Dili, the capital, told the Jakarta press that 'the US understands Indonesia's position on the Timor question'.[9]

Before the full scale invasion, the UN General Assembly had already been considering a Resolution sponsored by Indonesia and others, calling on all states 'to respect the inalienable right of the people of East Timor to self-determination, freedom and independence'[10]. This was of great importance, because it showed that not a single member state of the United Nations, including Indonesia herself, dissented from the proposition that the people of East Timor were entitled to the rights conferred on them by the Declaration on the Granting of Independence to Colonial Countries and Peoples, and by the International Covenants on Civil and Political, and on Economic Social and Cultural Rights. Article 1 of each of the Covenants provides that:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic social and cultural development.[11]

Indonesia, having restated this right for the people of East Timor in the draft Resolution, had to stage an event which could be presented as an act of self-determination, though it was impossible for the occupying forces to comply with the provisions of UN General Assembly Resolution 1541 of 1960. That Resolution was very specific on the criteria that had to be satisfied before integration of an erstwhile dependent territory with a sovereign state could be approved. Principle IX of 1541 provides that:

Integration should have come about in the following circumstances:
(a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;
(b) The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes.[12]

The event that was stage managed by Jakarta in an attempt to satisfy these requirements was an open session of the 'Regional Popular Assembly' in East Timor,

---

[9]Dale van Atta and Brian Toohey, **The Timor Papers**, part 1, National Times of Australia, May 30-Jun 5, 1982.
[10]**Decolonisation No 7: Issue on East Timor**, UN Department of Political Affairs, Trusteeship and Decolonisation, August 1976.
[11]**Article 1, International Covenant on Civil and Political Rights**, December 16, 1966.
[12]**UN General Assembly Resolution 1541**, December 15, 1960.

which resolved on May 31, 1976, to ask the Government of Indonesia for integration. According to an official account this Assembly was '*elected*' and '*composed representatives from all districts in East Timor*'[13], but the law passed by the 'Deliberative Council of East Timor', a shadowy body which had been formed by the Indonesian occupation forces on December 18, 1975, at the same time as the Foreign Minister Adam Malik announced the establishment of a 'provisional government of East Timor'[14], provided that in the capital city only, representatives would be elected on the principle of one man one vote, while elsewhere, they were to be chosen in accordance with the tradition and identity of the people of East Timor, whatever that may have meant. Only five of the 37 members were elected, as was acknowledged at the time by Domingos Olivera, spokesman of the so-called 'Provisional Government'[15], the remainder having been selected by Indonesian intelligence officers, advised by local quislings from Apodeti, the party of integration.[16] The official account of the process maintains that 27 members were elected, but this of course would have been impossible, since at the time, Fretilin controlled 80% of the territory. It may also be noted that in 1977, no election was held in East Timor, when the general elections were held in Indonesia.

Recently Brigadier Theo Syafei, the present military commander of Kolakops, the special operational command for East Timor, admitted that '*in the period from 1975 to 1977-78, territorial operations were focused on seizing control of the district and sub-district towns from Fretilin's stranglehold*'[17] He thus gave the lie to all previous versions of events, which asserted that Timorese forces had defeated Fretilin with help only from Indonesian volunteers and that the process was complete by the end of 1975[18]. Brigadier Syafei ought to know; he was one of the 10,000 Indonesian troops who attacked Dili on December 7, 1975..

Indonesian spokesmen always add that the session '*was attended by members of the diplomatic corps and representatives of the national and international media*'[19]. The journalists who did attend, even the correspondent of the Indonesian weekly *Tempo*,[20] all reported that they had no opportunity of speaking to the members of the Assembly, or of otherwise checking the authenticity of the proceedings. They were in Dili for only 3 hours, and were not even allowed to see the 'governor', the notorious Guilherme Gonçalves.

By no stretch of the imagination could it be claimed that the people of East Timor had '*attained an advanced stage of self-government with free political institutions*', and the

---

[13]**Indonesian News Special Issue Synopsis of events in East Timor**, Embassy of the Republic of Indonesia, Vol 19, No 21, December 5, 1991.
[14]Jill Joliffe, **East Timor**, 1978.
[15]Sue Ribbitt Roff, **Timor's Anschluss**, Edwin Hellen Press, 1992.
[16]James Dunn, **Timor: a people betrayed,** Jacaranda Press, 1983.
[17]**Kadaulatan Rakyat**, Jogjakarta, January 26, 1993..
[18]**East Timor: building for the future**; Department of Foreign Affairs, Republic of Indonesia, July 1992, p xiv. *'December 7, 1975: Dili is retaken from Fretilin forces, and 10 days later Provisional Government of East Timor is proclaimed. Four months of bloodshed are ended'.*
[19]Arizal Effendi, Head of the Political Department, Embassy of Indonesia in the UK, **Give peace and development a chance**, presented at the seminar of East Timor in the 1990s, School of Oriental and African Studies, University of London, March 11, 1992.
[20]**Tempo**, June 12, 1976.

Indonesians never refer to this part of Resolution 1541. From the Indonesian invasion, on December 7, 1975, a bloody war had been raging between the heavily armed Javanese and the resistance forces, resulting in tens of thousands of deaths and even larger numbers of injuries. An estimated 100,000 people were massacred by the Indonesian forces in the year following the invasion, according to Indonesian church sources[21], and there was absolutely no scope for institutions of any kind to be developed at that time in the 15% of the territory already under occupation.

The UN General Assembly first considered the invasion on December 12, 1975, when it 'strongly deplored' Indonesia's military action, called for Jakarta's armed forces to be withdrawn, and reaffirmed the people's right to self-determination and independence'[22]. In this Resolution, the General Assembly also referred specifically to Article 2 paragraph 4 of the United Nations Charter, which provides that:

....states should...refrain in their international relations from the threat or use of force against the territorial integrity or national independence of any state or in any other manner inconsistent with the purposes of the United Nations.

The Security Council was asked to act, and passed a Resolution[23] which again upheld 'the inalienable right of the people to self-determination and independence'. They called on Indonesia to withdraw all its forces from the territory, while not explicitly condemning the invasion as 'an act of aggression forbidden by the United Nations Charter and customary law'[24]. It may well be that if the international community had taken a more robust stand against the occupation, other breaches of Article 2 of the Charter, including the Turkish occupation of northern Cyprus and Saddam Hussein's invasion of Kuwait might have been deterred. Exemplary punishment of Indonesia for her violation of international law would have been a useful insurance policy, and it is worth noting that there is no distinction in international law between the cases of Kuwait and East Timor, as has been acknowledged by Ministers at the UK Foreign Office[25].

The political situations of Indonesia in 1975 and Iraq in 1991 were, however, very different. Indonesia had the tacit approval of Australia and the United States for the infamous attack of December 7, 1975, and she was able to count on the unwavering support of Japan, whose primary interest was the stability of the region. The ASEAN states, also, were more interested in keeping on good terms with the major regional power than upholding international law. India saw the annexation of East Timor as being similar to her own earlier occupation of Goa, and opposed demands for Indonesia's withdrawal. Indonesia's diplomats lobbied incessantly in the non-aligned movement, of which she had always been a leader, and among the industrialised states

---

[21] Arnold Kohen and John Taylor, **An act of Genocide**, TAPOL, 1979.
[22] **General Assembly Resolution 3485 (XXX)**.
[23] **Security Council Resolution 384** of December 22, 1975.
[24] Professor Roger S Clark, **The "decolonisation" of East Timor and the United Nations norms on self-determination and aggression**, the Yale Journal of world public order, Vol 7, No 1, Fall 1980.
[25] Tristan Garel-Jones MP, **unpublished letter**, April 5, 1991. *'I should like to correct any misapprehension that may have arisen that we drew a legal distinction between the invasion of East Timor and the invasion of Kuwait, because East Timor was a colony and Kuwait is a sovereign state. We drew no such distinction.*

of the west, which were eager to compete for Jakarta's huge arms contracts. So after one further Resolution[26] in April 1976, which repeated the demand for Indonesia's forces to be withdrawn and called upon all states to respect East Timor's right to self-determination in accordance with General Assembly Resolution 1514, the Security Council fell silent.

The General Assembly returned to the question of East Timor in December 1976, when it strongly deplored Indonesia's persistent refusal to comply with its earlier Resolutions on the subject[27]. In 1977, however, it contented itself with reaffirming its previous Resolutions, without repeating the demand for Indonesian forces to withdraw in the text of the Resolution[28] By 1978, the General Assembly contented itself with 'recalling' the earlier Resolutions, while reaffirming only 'the inalienable right of the people of East Timor to self-determination'[29]. Of course, that right could only be genuinely exercised if the Indonesians did withdraw, but leaving out the words seemed to indicate that the United Nations would be prepared to accept a formula which would allow the Indonesians to re-run the exercise of May 31, 1976 with better stage management.

The majorities for General Assembly Resolutions on East Timor were gradually narrowing, and when, in 1982, they finally pigeon holed the problem for the next ten years by passing it to the Secretary-General[30], the vote was 50 to 46. Indonesian propaganda had been effective over the years, and although there was plenty of evidence to show that the people of East Timor were as implacably resistant to Javanese 'colonial and alien domination' as ever, most member states would be delighted to abandon them if they could find some half decent way of getting the matter off the agenda of the General Assembly and the Fourth Committee. Australia's Prime Minister Bob Hawke finally recognised Indonesia's sovereignty over East Timor on August 18, 1985[31], wanting to get on with the negotiations on exploitation of the seabed resources between Australia and East Timor. The British are selling Jakarta $1.5 billion worth of Hawk military aircraft, as well as other military equipment[32]. The United States adopts the illogical position that it '*accepts Indonesia's incorporation of East Timor without maintaining that a valid act of self-determination has taken place*'.[33]The Non Aligned Movement held its meeting in Indonesia in September 1992. Cultural ties are promoted with Islamic countries, from Egypt at one end of the religious spectrum to Iran at the other[34].

Yet the question of East Timor stubbornly refuses to go away. The Timor Gap Treaty is being challenged by Portugal in the International Court, where it is being argued that the Treaty is inconsistent with international law and therefore invalid. East Timor returned again to the world's headlines when Timorese demonstrated for self-

---

[26]**Security Council Resolution 389** of April 22, 1976.
[27]**General Assembly Resolution 31/53** of December 1, 1976
[28]**General Assembly Resolution 32/34** of November 28, 1977.
[29]**General Assembly Resolution 33/39** of December 13, 1978.
[30]**General Assembly Resolution 37/30** of November 23, 1982.
[31]**The Australian**, August 23, 1985.
[32]**TAPOL**, Bulletin No 115, February 1993.
[33]Ronald E Woods, Minister, US Embassy in London, unpublished letter, February 19, 1992
[34]**Indonesian News**, Embassy of the Republic of Indonesia, Vol 20, No 32.

determination at a mass celebrated by the Pope on a visit to Dili on October 12, 1989; when students who spoke to the US Ambassador to Jakarta, on a visit to Dili, were severely beaten and arrested, and when over 180 peaceful demonstrators were killed by Indonesian troops at the Santa Cruz cemetery, Dili, on November 12, 1991[35]. It comes up regularly in the Congress of the United States and in the Japanese, Canadian and UK Parliaments. It is debated every year in the UN Decolonisation Committee. Parliamentarians for East Timor have several hundred Members in some 15 countries, and in March 1991 sent a deputation from Japan, Holland, Portugal, Australia and UK to see the former UN Secretary-General, Sr Xavier Perez de Cuellar in New York. The present Secretary-General is still charged with the duty of initiating 'consultations with all parties directly concerned, with a view to exploring avenues for achieving a comprehensive settlement of the problem'. As Sr Perez de Cuellar confirmed at the meeting with PET[36], this can only be within the framework of the Security Council resolutions of 1975 and 1976, and the eight General Assembly Resolutions of 1975 to 1982, which called on the Indonesians to withdraw their armed forces, so that a genuine act of self-determination could be held.

The problem of East Timor is not whether the people were entitled to the right of self-determination, or whether they have exercised it. They had the right, by universal agreement, and they were manifestly robbed of it by Indonesian aggression, as the UN Security Council and General Assembly both ruled. The lapse of time since the occupation cannot in any way diminish the right, nor can the violation of the Charter by Indonesia be purged, however long the occupation of East Timor may last. The difficulty arises from the failure of the United Nations to make the right justiciable, or to impose any penalties on those who violate it, except where the Security Council so decides.

There can be no doubt but that the right of self-determination is the most important of all human rights, and this was the reason why it was placed first in both the Covenants. It has been truly said that

'...the effective exercise of a people's right to self-determination is an essential condition...for the genuine existence of the other human rights and freedoms'.[37]

The lack of any mechanism for assertion of the right means that large and powerful states can flout it with relative impunity. The United Nations have often reaffirmed *'the legitimacy of the struggle of peoples for independence... and liberation from colonial and foreign domination by all available means, particularly armed struggle*[38]. Small oppressed peoples, knowing there is no authoritative tribunal within the UN system, to which they can appeal for help in upholding their right to self-determination, have no alternative but to resort to armed struggle, however unequal the odds may be. This lacuna in the system thus encourages conflict, frustrating the central purpose of the United Nations.

---

[35]Hearing on East Timor: the Santa Cruz massacre, Parliamentary Human Rights Group, December 1991.

[36]Parliamentarians for East Timor, Occasional newsletter, April 1991.

[37]Hector Gros Espiell **The right to self-determination: implementation of United Nations Resolutions;** United Nations, New York, 1970, para 59.

[38]General Assembly Resolution 33/24, November 29, 1978.

The people of East Timor have no jet bombers or tanks. They have no powerful allies in the United Nations, no big trade deals to offer their friends. But they do offer the international community something far more important: the opportunity of upholding a principle they themselves declared, which is today more than ever essential to the peace and stability of the whole world. The new world order, that grossly overworked phrase, must be a system in which peoples are liberated from local imperialism, just as over the last 50 years, almost all the former dependencies of European powers have been freed from salt sea imperialism. It is time, at last to fulfil the dream of a great American prophet:

National aspirations must be respected, peoples may now be dominated and governed only by their consent. Self-determination is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril. [39]

[39]Woodrow Wilson, Message to Congress, February 11, 1918.